

## The seal of the University of Cambridge, featuring a shield with a cross, a book, and a lion, surrounded by the text 'UNIVERSITY OF CAMBRIDGE' and 'FUND. 1209'.

No. 13-0190 AC

The transcript was filed on August 14, 2013, and we issued a briefing schedule. Both parties requested numerous extensions of the briefing schedule. After eight such extensions, the case became ready for our decision on February 21, 2014, the date the last written argument was filed.

## **Findings of Fact**

1. Mr. Bates was licensed by the Board to practice as a certified public accountant (“CPA”). His license was originally issued in 1979.<sup>1</sup>
2. Mr. Bates was the President, Secretary, and Director of an accounting firm in Jefferson City known as Buehler & Bates, P.C.
3. Joseph Chromcik and Wilma Chromcik were Mr. Bates’ clients. Mr. Bates and Mr. Chromcik met each other in the 1970s when they served together in the National Guard. Over the years they became friends, and they also developed a professional relationship.
4. The Chromciks were childless and as they grew older, they relied on Mr. Bates to help them with a number of matters. They paid him \$2,000 per month for accounting and other services.
5. In 2005 the Chromciks decided they could no longer live at home due to failing health.
6. Mr. Bates helped the Chromciks choose a nursing home. He also helped them with selling their house and funeral planning.
7. Through an attorney, the Chromciks executed a financial and health care power of attorney in favor of Mr. Bates in 2005.
8. Between July 2005 and January 2006, Mr. Bates wrote three checks to himself for a total of \$1,902,000 from the Chromciks’ bank accounts (“the Chromcik money”). Mrs. Chromcik signed the checks.

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<sup>1</sup> At that time, the Board required a CPA to obtain a “certificate,” and that is what Mr. Bates received. Later, the Board began to require licensure. Mr. Bates received a license in 1989. Because the difference is immaterial for purposes of this decision, we simply refer to his “license.”

9. Gift tax returns corresponding to these checks, indicating that they were gifts to Mr. Bates, were signed by the Chromciks in August 2005, January 2006, and February 2006, and filed with the Internal Revenue Service.

10. Mr. Bates deposited these checks into his personal account at Jefferson Bank.

11. Mr. Bates then formed a partnership with Mrs. Chromcik, named “B&B”, and opened an account in its name at Central Bank. He wrote checks from his Jefferson Bank account to deposit the Chromcik money into the partnership account.

12. Mr. Bates wrote checks from the partnership account to establish brokerage accounts at Stifel Nicolaus. He invested the money.

13. When Mr. Bates filed partnership returns for B&B for 2005 and 2006, he identified his percentage of ownership of B&B as 100%.

14. Mr. Bates spent some of the Chromcik money on their needs, for example to help pay for Mrs. Chromcik’s single room with a view in a nursing home. But he spent the following amounts of the Chromcik money for his own use:

- a. \$200,000 for his daughter’s college education;
- b. \$80,000 in a divorce settlement;
- c. \$15,000 for a sport utility vehicle; and
- d. \$350,000 toward a \$550,000 yacht.

Mrs. Chromcik knew, and did not disapprove, of the first two of these expenditures.

15. Mr. Chromcik, who suffered from Alzheimer’s disease, died in September 2006.

16. In 2007,<sup>2</sup> a United States Treasury agent visited Mrs. Chromcik at her nursing home. The agent told her that the balance of the Chromcik money could be subject to forfeiture as part of a money laundering scheme.

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<sup>2</sup> The record is not clear when this occurred, although it seems likely that it was in early September 2007, shortly before Mrs. Chromcik revoked the power of attorney.

17. Mrs. Chromcik immediately sought the advice of an attorney. On September 7, 2007, she revoked the power of attorney she had given Mr. Bates.

18. The United States filed a complaint for forfeiture *in rem* of the remaining Chromcik money, alleging that it had been the subject of money laundering, and seized it.

19. Mrs. Chromcik's attorney filed a claim on her behalf, as an "innocent owner," to recover the balance of the Chromcik money.

20. Mr. Bates agreed to give up his interest in the remaining Chromcik money so that it would be returned to Mrs. Chromcik. She recovered approximately \$1.4 million.

21. In February 2008, Mr. Bates entered into a pretrial diversion agreement with the United States Attorney in which he admitted converting a portion of the Chromcik money for his personal use. Pursuant to the agreement, Mr. Bates surrendered his public accountancy certificate on April 16, 2008. He also agreed to pay restitution in the amount of \$502,000, and to sell the yacht and sport utility vehicle he had bought and pay the proceeds to Mrs. Chromcik.

22. Mrs. Chromcik died in May 2008. She willed her estate to relatives of Mr. Chromcik.

23. Mr. Bates sold the yacht and the sport utility vehicle and paid the proceeds to Mrs. Chromcik. He sold the yacht at a loss, and he owed a large debt on it. Thus, he netted only \$15,000 from that sale.

24. Mr. Bates has not otherwise made the remaining restitution of approximately \$500,000 to her estate.

25. On April 24, 2009, Mr. Bates completed his twelve-month term of pretrial diversion supervision with no new arrests or warrants.

26. In October 2009, Mr. Bates entered into a settlement agreement with the Board in which he agreed that the Board had cause to discipline his license under § 326.310.2(5)(6), and

(15).<sup>3</sup> He agreed that he had committed misconduct in the performance of the functions or duties of his profession, and that he had violated the AICPA's Code of Professional Conduct for Integrity and Due Care.<sup>4</sup>

27. Following a disciplinary hearing, the Board revoked Mr. Bates' certificate and license to practice as a CPA in Missouri on December 18, 2009.

28. On February 2, 2010, the attorney for Mr. and Mrs. Chromcik's estates reported to Mr. Bates that the heirs had agreed to not pursue any further claims against him.

29. Since his revocation, Mr. Bates has continued to meet the continuing education requirements for a CPA.

30. Mr. Bates applied for licensure again on November 26, 2012.

31. By letter dated January 7, 2013, the Board denied Mr. Bates' application.

### **Conclusions of Law**

We have jurisdiction to hear Mr. Bates' complaint because he seeks our review of the decision to deny him licensure. § 621.120, RSMo 2000; § 326.310.1. Mr. Bates has the burden to prove he is entitled to a license. *Id.* We exercise the same authority that has been granted to the Board. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).

Therefore, we simply decide the application *de novo*. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012). When an applicant for licensure files a complaint, the agency's answer provides notice of the issues. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

The Board's answer references its denial letter, which states that there is cause to deny Mr. Bates' license under § 326.310:

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<sup>3</sup> Statutory citations, unless otherwise indicated, are to RSMo Cum. Supp. 2013. The relevant statutes have not changed since 2009 when Mr. Bates entered into the settlement agreement with the Board.

<sup>4</sup> Although not contained in the record, we take official notice that the AICPA is the "American Institute of CPAs." § 536.070.6.

1. The board may refuse to issue any license or permit required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may file a complaint with the administrative hearing commission as provided by chapter 621 or may initiate settlement procedures as provided by section 621.045 against any certified public accountant or permit holder required by this chapter or any person who fails to renew or surrenders the person's certificate, license or permit for any one or any combination of the following causes:

\* \* \*

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter or any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Violation of professional standards or rules of professional conduct applicable to the accountancy profession as promulgated by the board; [and]

(19) Failure, on the part of a holder of a certificate, license or permit pursuant to section 326.280 or 326.289, to maintain compliance with the requirements for issuance or renewal of such certificate, license, permit or provisional license or to report changes to the board pursuant to sections 326.280 to 326.289[.]

In its written argument, however, the Board does not even mention, much less explain why there is cause to deny Mr. Bates licensure under, §326.310.2(4) and (13). Although the Board may have abandoned those grounds for denial, we address them, briefly, below.

As to the other grounds, the Board relies almost entirely on its 2009 settlement agreement with Mr. Bates. It argues that he is now precluded from relitigating the facts underlying that agreement, and that “the evidence is certain in this case that Mr. Bates’[sic] committed professional misconduct when he misappropriated funds from his clients.” *Resp. Brief* at 4. But, as Mr. Bates points out, the Board misapprehends the nature of his case. He does not contest any of the facts he agreed to in the settlement agreement, or that he committed misconduct or violated the AICPA’s Code of Professional Conduct for Integrity and Due Care. Rather, he argues that, despite the events underlying his 2009 license revocation, he possesses good moral character, and is therefore now entitled to a CPA license. We address his arguments below.

### I. Cause for Denial

#### Subdivision (4) – Obtaining Compensation by Fraud

As mentioned above, the Board does not rely on this section of the law to support its decision to deny Mr. Bates a license, and Mr. Bates likewise does not address it. There is no evidence in the record that Mr. Bates obtained the Chromcik money as a form of “fee, charge, tuition, or other compensation.” The issue is whether it was a gift, or simply a wrongful conversion. We find no cause for denial under § 326.310.2(4).

#### Subdivision (5) – Professional Standards

Section 326.310.2(5) allows disciplinary action against Mr. Bates for committing “[i]ncompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter[.]” Mr. Bates agreed in 2009, and still agrees, that his actions in using the Chromciks’ money for his own purposes constituted misconduct. There is cause to deny licensure under § 326.310.2(5).

Subdivisions (6) and (15) – Violation of a Rule

Section 326.310.2(6) allows disciplinary action against Mr. Bates for violation of any lawful regulation adopted pursuant to that chapter. The specific regulation referenced in the 2009 settlement agreement is 20 CSR 2010-3.010(2), which provides that all licensees shall comply with the AICPA's Code of Professional Conduct:

As the AICPA Code of Professional Conduct is considered to be generally accepted standards of auditing and accounting, regardless whether a licensee is a member or non-member of the AICPA, the licensee shall comply with its provisions.

In particular, Mr. Bates agreed that he violated the AICPA's Code of Professional Conduct for Integrity, which reads in pertinent part:

To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity. . .

Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage . . .

Integrity is measured in terms of what is right and just. In the absence of specific rules, standards, or guidance, or in the face of conflicting opinions, a member should test decisions and deeds by asking: "Am I doing what a person of integrity would do? . . .

Integrity also requires a member to observe the principles of objectivity and independence of due care. [Resp. brief at 6]

and the section on Due Care, which reads in pertinent part:

Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public.

Resp. brief at 7. We agree that Mr. Bates' conduct violated these provisions of the AICPA Professional Code. There is cause to deny licensure under § 326.310.2(6) and (15).

### Subdivision (13) – Violation of Professional Trust or Confidence

The phrase “professional trust or confidence” is not defined in Chapter 326, nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]...  
engaged in one of the learned professions or in an occupation  
requiring a high level of training and proficiency...[;]  
and]...characterized or conforming to the technical or ethical  
standards of a profession or occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident  
dependence on the character, ability, strength, or truth of someone  
or something...[.]

*Id.* at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.* Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences.

The Chromciks relied on Mr. Bates to handle their finances appropriately, legally, and in a manner that would safeguard their money so as to support them in their old age. We do not believe Mr. Bates intended to steal the money and deprive the Chromciks of its use, so his violation of their trust and confidence is not of the most egregious variety. But a violation it most certainly was. Mr. Bates’ conduct in accepting the money and depositing it into several different accounts gave rise to suspicions of money laundering and resulted in the temporary

seizure of the Chromcik money by the United States. And, even if the Chromciks meant for Mr. Bates to eventually inherit their money, it is clear that they were vitally interested that it be safeguarded for their benefit while they were alive. Mr. Bates' purchase of an expensive yacht with a portion of the money without Mrs. Chromcik's knowledge or consent undermined their interest and violated their trust.

There is cause to deny Mr. Bates a license under § 326.310.2(13).

Subdivision (19) and § 326.280.1(3) – Good Moral Character

Section 326.310.2(19) allows disciplinary action if Mr. Bates failed to maintain compliance with the requirements for issuance or renewal of his license. The specific requirement that the Board alleges he failed to maintain is good moral character pursuant to § 326.280.1(3). We determine the issue based on the record before us. To do so, we must review the parties' disparate versions of the events underlying the 2009 revocation, as well as any subsequent relevant evidence.

In Mr. Bates' view, he was like a son to the childless Chromciks. They intended to leave their estate to him, and made gifts of the money to him with the understanding that he would use it for their benefit while they were still alive. In the words of the attorney who represented Mrs. Chromcik in recovering her money after the United States had seized it, "I viewed this as sort of a very inartful estate planning attempt that went horribly wrong."<sup>5</sup> However, when a federal agent told Mrs. Chromcik in her nursing home that all the money might be forfeited, she panicked, immediately saw an attorney, and revoked the power of attorney she had executed in Mr. Bates' favor. At this point, Mr. Bates, despite the existence of evidence that it had been gifted to him, gave up his claim to the Chromcik money so that Mrs. Chromcik would be secure in the knowledge she could remain in her nursing home. Mr. Bates has not made further restitution because neither the United States nor the Chromcik heirs have insisted on it.

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<sup>5</sup> Ex. D at 19.

In the Board's view, Mr. Bates simply misappropriated his clients' funds for selfish reasons. Moreover, he continues to display a lack of good moral character, as evidenced by his failure to make complete restitution to Mrs. Chromcik's estate. And, while he agreed in 2009 that he committed misconduct, his acknowledgment is insincere, given that he persists in portraying the circumstances in which he obtained the Chromcik money as a gift.

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). A person's good moral character may be rehabilitated. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 616 (Mo. App., K.C.D. 1974); *State Bd. of Regis'n for the Healing Arts v. De Vore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974). We determine the question of Mr. Bates' moral character at the time of this hearing, not as of 2006, although those events are certainly relevant in making our determination on this point.

Mr. Bates presented a slew of letters from past and present clients who attest to his professionalism, competence, trustworthiness, honesty, integrity, and moral standards. While these letters are hearsay, the Board did not object to them, and we therefore consider them. *See Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App., S.D. 2004) (citing *Dorman v. State Bd. of Regis'n for the Healing Arts*, 62 S.W.3d 446 (Mo. App., W.D. 2001)).

Most compelling, however, is the testimony of the attorney who represented Mrs. Chromcik in her successful effort to recover the forfeited funds – that Mr. Bates had a very good reputation for honesty and integrity. The attorney testified under oath at the 2009 disciplinary hearing that he believed the Chromciks intended to leave their estate to Mr. Bates, and that they and Mr. Bates had such an understanding. After the United States seized the Chromcik money, the attorney characterized Mr. Bates' conduct in this way:

At that point, Dale Bates could have done one of two things. He could have defended himself by saying, look, they signed gift tax

returns for this 1.3 million. They signed the checks for 1.3 million. Or he could have done what he did, which was basically fall on his sword and say it is all my fault and please give [Mrs. Chromcik's] money back, and that's what he did.

So with his full cooperation and with his decision to not really assert those gift tax returns and signed checks, she was accepted by the Court to be an innocent owner and the 1.3 million dollars was restored to her, which gave her great peace of mind and allowed her to live out the rest of her life in her private room with the river view at Heisinger Bluffs.

She did make it clear to me though that if Mr. Bates was ever criticized from a professional standpoint, that she would like to tell whoever it was that might try to discipline him that she did not want him to lose his license.<sup>[6]</sup>

There are many countervailing factors to consider in determining whether Mr. Bates presently has good moral character. Even if we believe the Chromciks intended to leave him their estate, it is clear that Mrs. Chromcik did not intend to simply make an unrestricted gift of it to Mr. Bates during her lifetime. Given that conclusion, Mr. Bates' spending a large sum of the Chromcik money on a yacht without Mrs. Chromcik's knowledge or consent evidenced poor moral character. On the other hand, when the transactions came under suspicion, Mr. Bates readily gave up the Chromcik money. His career as a CPA seems otherwise to have been unblemished. Past and present clients attested to his competence and integrity when he applied for his CPA license again in 2012, even knowing about the circumstances that led to his license revocation.

Mr. Bates has not made full restitution to the Chromcik estate. Citing *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010), the Board argues that "indifference to making restitution is an aggravating factor to be considered in professional licensing matters." Resp. Brief at 5. Mr. Bates, on the other hand, argues that he is not legally required to pay restitution under the terms

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<sup>6</sup> Ex. D at 16.

of his settlement agreement with the Board, and that he has been released from that obligation by the United States.

We agree that restitution is a factor to be considered here, but we also believe the circumstances of each case must be carefully considered. Mrs. Chromcik died before Mr. Bates had the opportunity to make restitution. Mr. Bates sold the yacht at a large loss. The United States and the Chromcik heirs have apparently released him from the obligation. We infer that these are the factors that have influenced his apparent decision not to make full restitution, but the record lacks a clear and definite explanation on that point. In addition, restitution may not only be a legal obligation, but a moral one, and Mr. Bates' moral character is, after all, the subject at hand. It is Mr. Bates' burden to convince this tribunal that his apparent decision not to make restitution is appropriate under these circumstances.

Although it is a close and difficult determination, we find that Mr. Bates has not sufficiently demonstrated his good moral character. There is cause to deny licensure under § 326.310.2(19).

#### Summary of Cause for Denial

There is cause to deny Mr. Bates a license under § 326.310.2(5), (6), (13), (15), and (19).

#### II. Discretion

Having determined that Mr. Bates has not carried his burden to show that he presently has good moral character, he lacks one of the qualifications to be licensed as a CPA. It could be argued that that conclusion simply ends our inquiry.

In this case, however, the Board pled that Mr. Bates should be denied a license for lack of good moral character under § 326.310.2(19). Section 326.310.2 provides that the Board *may* deny a license to an applicant for the reasons specified therein. A finding of cause for denial under § 326.310.2(19), therefore, makes the decision discretionary. To be cautious and

thorough, we analyze whether Mr. Bates should be granted a license as an exercise of discretion. In doing so, we stand in the shoes of the Board, and we remake the decision as to licensure based on the record in front of us, as of the time of the hearing. As the court stated in *Missouri Real Estate Appraisers Comm'n v. Funk*, 306 S.W.3d 101, 105 (Mo.App.W.D., 2010):

Though the issue of whether Funk demonstrated competence and knowledge in his commercial appraisals was the rationale for the denial of his general real estate appraiser's certification by the MREAC, the scope of the AHC's hearing was not restricted to this issue. **Instead, the AHC was entitled to conduct a fresh inquiry into whether Funk was deserving of certification, based upon the entire record of relevant admitted evidence pertaining to certification** [emphasis added]. *Dep't of Soc. Servs., Div. of Med. Servs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 15 (Mo.App. W.D.2007) ("The commission actually steps into the department's shoes and becomes the department in remaking the department's decision. This includes the exercise of any discretion that the department would exercise."). Thus, the inquiry of the AHC was whether, **at the time of the AHC hearing**, Funk met the requirements for general real estate appraisal certification as outlined in sections 339.511.3 and 339.535

(Emphasis added; footnotes omitted). We follow the direction of the court of appeals and define our task as determining whether, at the time of the hearing, Mr. Bates was deserving of licensure as a CPA.

In making this determination, we consider a number of factors. In the case of a licensee who has been convicted of a crime, we consider the nature and seriousness of the original conduct, the nature of the crimes pled guilty to, the relationship of the offenses to the profession for which licensure is sought, the date of the conduct and guilty pleas, the conduct of the applicant since then and since any release from imprisonment or probation, the applicant's reputation in the community, and any other evidence relating to the extent to which the applicant has repented and been rehabilitated. *De Vore*, 517 S.W.2d at 484.

Mr. Bates has not been convicted of a crime. In their briefs, the parties agree that the sole issue before this Commission is whether he is of good moral character. We disagree, because

even if we had found Mr. Bates had proved his good moral character, a license may still be denied for any of the reasons set forth in § 326.310.2. We look to the guidance of the court in *DeVore* and adapt it to this case. Thus, we consider the nature and seriousness of the original conduct, its relationship to the profession of CPA, when the conduct occurred, Mr. Bates' conduct since then, his reputation, and any other evidence relating to whether Mr. Bates has been rehabilitated.

We believe Mr. Bates' evidence that the Chromciks intended to give him at least a portion of their money for his personal use. Mr. Bates has a good reputation for competence and integrity. He continues to practice accounting, and enjoys the trust of his clients. His conduct with respect the Chromcik incident seems to have been an isolated incident in a long and otherwise respectable career. He has maintained the continuing education necessary for a CPA even while he has not been licensed. Although he has not made the full restitution he agreed to in his pretrial diversion agreement, there are circumstances that could explain and mitigate his not doing so.

Against these factors, we balance the fact that in 2005 and 2006, Mr. Bates engineered a clumsy scheme in which the Chromciks transferred full control over all their money to him. Mr. Bates deposited that money into several different accounts prior to investing it, giving rise to suspicions of money laundering. This put all of the Chromcik money at risk – money that Mrs. Chromcik relied on to pay for her room in a nursing home. At the time, Mr. Bates was a very experienced CPA. Clients rely on CPAs to help them *avoid* this kind of trouble – not to help them become enmeshed in it.

Mr. Bates also spent a substantial portion of the Chromcik money for his own purposes. Although the evidence suggests that Mrs. Chromcik may have approved his use of the funds for his divorce settlement and his daughter's college education, it also suggests that she had no idea

he planned to buy a yacht with the money. Even if she intended Mr. Bates to be her eventual heir, she relied on the continued existence of the Chromcik money to ensure her nursing home placement and her peace of mind. Mr. Bates' expenditure of a large amount of the money for an expensive yacht under those circumstances was an astonishing lapse in judgment. The nature of his conduct was directly related to his profession, and it was very serious.

At the hearing, Mr. Bates testified:

. . . I acknowledged the wrongdoing. I would never do that again. I mean that was something I felt like at the time it was right, the gifts, and so forth. As I look back, I was wrong. That's all I can say. I was – I should have left it all there and waited to the end and at the time of their death, so forth, and then handled it at that time. I could say it over and over and over . . . As I look back at it now, as you look back hindsight 20/20, I was wrong. And I can see where someone else looks at it. I should have just not ever accepted those gifts. That's all I can say on that part. I was wrong in that regards.<sup>7</sup>

It is unclear from this vague testimony whether, even today, Mr. Bates appreciates the gravity of his conduct with respect to the Chromciks and their money in 2005 and 2006. We lack the clear proof that he has gained such an understanding. For example, while he has maintained the continuing education necessary for CPA licensure, we do not have evidence that he has pursued education in the fields that might have helped him avoid the situation with the Chromciks, for example, in ethics, due care, or how to avoid suspicious financial transactions. These are the types of issues that the AICPA standards regarding integrity and due care seem designed to prevent.

The purpose of the professional licensing laws is the protection of the public. *Bird v. Missouri Bd. of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects* 259 S.W.3d 516, 523 (Mo. banc, 2008), citing *Duncan v. Missouri Board for Architects*, 744 S.W.2d 524, 535–536 (Mo.App.1988). We must consider that purpose here. It is

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<sup>7</sup> Tr. 66.

clear that Mr. Bates is remorseful about the situation that occurred, but it is not clear he realizes that he not only overstepped professional boundaries, but why his conduct put his elderly client's life savings at risk. We conclude that Mr. Bates has not met his burden of proof. We do not have enough evidence that he can safely resume practice as a CPA.

### **Summary**

We deny Mr. Bates' application for a CPA license.

SO ORDERED on March 3, 2014.

/s/ Karen A. Winn  
KAREN A. WINN  
Commissioner